

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

ANGELICA DEL VALLE PÉREZ,
et al.,

Plaintiffs,

v.

POLICE DEPARTMENT OF PUERTO
RICO, et al.,

Defendants.

Civil No. 06-2184 (JAF)

OPINION AND ORDER

Plaintiffs Angélica Del Valle Pérez ("Del Valle") and her common-law partner José Padín bring this action against Defendants Police Department of Puerto Rico ("PDPR"), Carlos Merced, Richard Robles, José Vélez Cuba, Ismael Martínez, Melvin Soberal Morales, and unnamed PDPR supervisors, alleging violations of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. §§ 2000e to 2000e-17 (2006), the Constitution of Puerto Rico, and Puerto Rico laws, 29 L.P.R.A. §§ 146-51 (2001 & Supp. 2006) ("Law 100"), 29 L.P.R.A. §§ 467-74 (2001), 29 L.P.R.A. §§ 1321-41 (2001), 29 L.P.R.A. §§ 155-155m (2001), and 31 L.P.R.A. § 5141 (1990). Docket Document No. 1-1. Plaintiffs seek injunctive and declaratory relief and damages. Id. Defendants move to dismiss Plaintiffs' complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and (6). Docket Document No. 13. Plaintiffs oppose. Docket Document No. 18-1.

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I.

Factual and Procedural Synopsis

____We derive the following relevant factual summary from Plaintiffs' complaint. Docket Document No. 1-1. As we must, we assume all Plaintiffs' allegations to be true and make all reasonable inferences in their favor. Alternative Energy, Inc. v. St. Paul Fire & Marine Ins., Co., 267 F.3d 30, 36 (1st Cir. 2001).

Plaintiff Del Valle, a resident of Manatí, Puerto Rico, has been employed as a police officer with PDPR since November 2004. Defendants Merced, Robles, Vélez, and Martínez are members of the PDPR with supervisory authority over Del Valle. Defendant Soberal is a police officer who worked with Del Valle.

From November 2004 to February 2005, Soberal made sexually-explicit remarks to Del Valle while they were working together. Del Valle complained of the conduct to Martínez and Vélez. However, Del Valle's supervisors ignored her complaints, refused to intervene, and reprimanded her. Soberal's conduct continued. In March 2005, Del Valle learned she was pregnant. In April and May of 2005, Del Valle submitted a total of five medical certificates to Merced requesting accommodations. Her doctors recommended that she be assigned to a desk duty because there were complications with her pregnancy. Del Valle's supervisors ignored these requests; they gave her more difficult and strenuous work assignments, ridiculed her, and made negative remarks about her pregnancy. Del Valle continued to make

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1 complaints to Merced and Robles, but they dismissed them and mocked
2 her. Upon Del Valle's return from maternity leave, Soberal continued
3 to sexually harass her. Meanwhile, Del Valle's supervisors attempted
4 to convince her to quit her job or continue on sick leave. They
5 assigned her to the same shifts as Soberal and told her that there
6 was no work for her.

7 On December 14, 2005, June 5, 2006, and August 30, 2006, Del
8 Valle filed charges of discrimination against PDPR.¹ The Equal
9 Employment Opportunity Commission ("EEOC") issued right-to-sue
10 letters on August 31 and September 1, 2006. Docket Document No. 18-
11 2.

12 On November 27, 2006, Plaintiffs filed the present action.
13 Docket Document No. 1-1. Defendants filed a motion to dismiss on
14 April 18, 2007, Docket Document No. 12, and amended the motion on
15 April 21, 2007, Docket Document No. 13. Plaintiffs opposed on May 17,
16 2007. Docket Document No. 18-1.

17 II.

18 Standards

19 **A. Motion to Dismiss Standard under Rule 12(b)(1)**

20 Under Rule 12(b)(1), a defendant may move to dismiss an action
21 against him for lack of federal subject matter jurisdiction. See FED.
22 R. CIV. P. 12(b)(1). Since federal courts are courts of limited

¹Although the complaint does not specify, we assume that all three charges were brought before the EEOC.

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1 jurisdiction, the party asserting jurisdiction has the burden of
2 demonstrating its existence. See Skwira v. United States, 344 F.3d
3 64, 71 (1st Cir. 2003) (citing Murphy v. United States, 45 F.3d 520,
4 522 (1st Cir. 1995)). In assessing a motion to dismiss for lack of
5 subject matter jurisdiction, we "must construe the complaint
6 liberally, treating all well-pleaded facts as true and drawing all
7 reasonable inferences in favor of the plaintiffs." Viqueira v. First
8 Bank, 140 F.3d 12, 16 (1st Cir. 1998) (citing Royal v. Leading Edge
9 Prods., Inc., 833 F.2d 1, 1 (1st Cir. 1987)). Additionally, we may
10 review any evidence submitted by the parties to resolve factual
11 disputes bearing upon the existence of jurisdiction. Aversa v. United
12 States, 99 F.3d 1200, 1210 (1st Cir. 1996).

13 **B. Motion to Dismiss Standard under Rule 12(b) (6)**

14 Pursuant to Federal Rule of Civil Procedure 12(b) (6), a
15 defendant may move to dismiss an action against him, based solely on
16 the pleadings, for the plaintiff's "failure to state a claim upon
17 which relief can be granted." FED. R. CIV. P. 12(b) (6). In assessing
18 a motion to dismiss, "[w]e begin by accepting all well-pleaded facts
19 as true, and we draw all reasonable inferences in favor of the
20 [nonmovant]." Wash. Legal Found. v. Mass. Bar Found., 993 F.2d 962,
21 971 (1st Cir. 1993); see also Coyne v. City of Somerville, 972 F.2d
22 440, 442-43 (1st Cir. 1992). We then determine whether the plaintiff
23 has stated a claim under which relief can be granted.

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1 A plaintiff must set forth "a short and plain statement of the
2 claim showing that the pleader is entitled to relief," FED. R. CIV.
3 P. 8(a)(2), and need only give the respondent fair notice of the
4 nature of the claim and petitioner's basis for it. Swierkiewicz v.
5 Sorema N.A., 534 U.S. 506, 512-15 (2002). We note that in order to
6 survive a motion to dismiss, a plaintiff must allege facts that
7 demonstrate "a plausible entitlement to relief." Rodriguez-Ortiz v.
8 Margo Caribe, Inc., 490 F.3d 92, 95 (1st Cir. 2007) (citing Bell Atl.
9 Corp. v. Twombly, ___ U.S. ___, 127 S. Ct. 1955, 1967 (2007)).

10 III.

11 Analysis

12 Defendants move to dismiss Plaintiffs' complaint on the grounds
13 that (1) Plaintiffs failed to exhaust administrative remedies as
14 required by Title VII; (2) Title VII does not provide for personal
15 liability; (3) Defendants are entitled to Eleventh Amendment immunity
16 from Plaintiffs' Puerto Rico claims; (4) Defendants are not liable
17 under Law 100; and (5) we should decline to exercise supplemental
18 jurisdiction over Plaintiffs' Puerto Rico claims. Docket Document
19 No. 13. We examine each of these arguments in turn.

20 Defendants assert that Plaintiffs failed to exhaust their
21 administrative remedies prior to bringing the present action. Docket
22 Document No. 13. Before filing a Title VII claim in federal court,
23 a claimant must exhaust administrative remedies by making a claim
24 with the EEOC. Lawton v. State Mut. Life Assurance Co. of Am., 101

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1 F.3d 218, 221 (1st Cir. 1996). Plaintiffs submit two right-to-sue
2 letters from the EEOC, stating that the EEOC was terminating its
3 processing of the charges and that Del Valle had a right to sue in
4 federal or state court. Id. These letters clearly show that
5 Plaintiffs exhausted their Title VII administrative remedies by
6 filing charges with the EEOC as required.

7 Defendants assert that Plaintiffs' Title VII claims against
8 Defendants Robles, Merced, Soberal, Vélez, and Martínez must be
9 dismissed because Title VII does not provide for personal liability.
10 Docket Document No. 13. As Plaintiffs note in their opposition,
11 however, the complaint is clear that Plaintiffs bring their Title VII
12 claims against PDPR only. See Docket Document Nos. 1-1, 18-1. We,
13 therefore, reject this argument.

14 Defendants next argue that Plaintiffs' claims under Puerto Rico
15 law against PDPR must be dismissed because PDPR is entitled to
16 sovereign immunity from suit pursuant to the Eleventh Amendment to
17 the U.S. Constitution. Docket Document No. 13. Under the Eleventh
18 Amendment, "an unconsenting State is immune from suits brought in
19 federal courts by her own citizens as well as by citizens of another
20 State." Edelman v. Jordan, 415 U.S. 651, 662-63 (1974) (citing
21 cases); see also U.S. CONST. amend XI. The Commonwealth of Puerto
22 Rico is considered a state for purposes of Eleventh Amendment
23 analysis. Jusino Mercado v. Puerto Rico, 214 F.3d 34, 37 (1st Cir.
24 2000); Ursulich v. P.R. Nat'l Guard, 384 F. Supp. 736, 737 (D.P.R.

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1 1974). Eleventh Amendment immunity extends to state agencies,
2 including PDPR, that function as "arms of the Commonwealth," Rivera
3 v. Medina, 963 F. Supp. 78, 82 (1997), as well as to Puerto Rico
4 officials sued in their official capacities "where recovery will come
5 from the public fisc," Culebras Ent. Corp. v. Rivera Rios, 813 F.2d
6 506, 516 (1st Cir. 1987) (citing Kentucky v. Graham, 473 U.S. 159,
7 165-66 (1985)). Finally, while the Eleventh Amendment permits suits
8 for injunctive relief under federal law, it does not permit
9 injunctive relief against state officials for violations of state
10 law. Diaz-Fonseca v. Puerto Rico, 451 F.3d 13, 43 (1st Cir. 2006)
11 (citing Ex Parte Young, 209 U.S. 123 (1908)).

12 The Eleventh Amendment, thus, bars all of Plaintiffs' Puerto
13 Rico claims against PDPR, see Rivera, 963 F. Supp. at 82, and against
14 the individually-named Defendants insofar as Plaintiffs name them in
15 their official capacities, see, e.g., Diaz-Fonseca, 451 F.3d at 43.
16 Plaintiffs' Puerto Rico claims remain only against the individual
17 Defendants in their personal capacities. See Graham, 473 U.S. at
18 165-66.

19 Defendants assert that Plaintiffs' Law 100 claims must be
20 dismissed because the statute does not apply to government entities.
21 Docket Document No. 13 (citing 29 L.P.R.A. § 146-51). Puerto Rico's
22 Law 100 prohibits employers from taking discriminatory employment
23 action based on sex. 29 L.P.R.A. § 146. The law defines "employer"
24 as "any natural or artificial person employing laborers, workers or

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1 employees It shall include all such agencies or
2 instrumentalities of the Government of Puerto Rico as may be
3 operating as private businesses or enterprises." Law 100, therefore,
4 protects employees in the private sector and employees of government
5 entities that operate as private businesses. Rodriguez Cruz v.
6 Padilla Ayala, 125 D.P.R. 486, 508 (1990); see also Marin-Piazza v.
7 Aponte-Roque, 873 F.2d 432, 436 (1st Cir. 1989). Because PDPR does
8 not function as a business or private entity, Law 100 does not apply
9 to it. Hernandez Payero v. Puerto Rico, 338 F. Supp. 2d 279, 282
10 (D.P.R. 2004). Accordingly, we dismiss Plaintiffs' Law 100 claim.

11 Finally, Defendants ask that we decline to exercise supplemental
12 jurisdiction over Plaintiffs' Puerto Rico claims. Docket Document
13 No. 13. Because we have not dismissed Plaintiffs' federal Title VII
14 claims, we choose to exercise supplemental jurisdiction over
15 Plaintiffs' Puerto Rico claims. See, e.g., Rodriguez v. Doral
16 Mortgage Corp., 57 F.3d 1168, 1176 (1st Cir. 1995).

17 IV.

18 Conclusion

19 For the reasons stated herein, we **GRANT** Defendants' motion to
20 dismiss **IN PART** and **DENY** it **IN PART**, Docket Document No. 13. We
21 **DISMISS** Plaintiffs' Puerto Rico claims against Defendant PDPR and
22 against Defendants Merced, Robles, Vélez, Martínez, and Soberal in
23 their official capacities and Plaintiffs' Law 100 claims against all

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1 Defendants **WITH PREJUDICE**. Plaintiffs' Title VII claims against
2 Defendant PDPR and Plaintiffs' Puerto Rico claims under 29 L.P.R.A.
3 §§ 467-74, 29 L.P.R.A. §§ 1321-41, 29 L.P.R.A. §§ 155-155m, and 31
4 L.P.R.A. § 5141 against Defendants Merced, Robles, Vélez, Martínez,
5 and Soberal in their personal capacities remain.

6 **IT IS SO ORDERED.**

7 San Juan, Puerto Rico, this 11th day of February, 2008.

8 s/José Antonio Fusté
9 JOSE ANTONIO FUSTE
10 Chief U. S. District Judge
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